CASENOTES

Walker v. Armco Steel Corporation: The Jurisprudence of Federal Rule 3

I. INTRODUCTION

The Federal Rules of Civil Procedure were designed to bring procedural uniformity to the federal court system.[1] This goal of uniform procedure, however, ran headlong into the emergent *Erie* doctrine.[2] One variant of the doctrine required federal courts exercising diversity of citizenship jurisdiction to apply state rather than federal law if its application would change the outcome of the case.[3] Recognizing a conflict between the goals of uniform federal procedure and of uniform outcome in state and federal forums, the Supreme Court in *Hanna v. Plumer*[4] removed the Federal Rules from the purview of the *Erie* doctrine and announced a separate standard more solicitous of federal procedural uniformity.[5] The *Hanna* Court, however, con-

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1. In promulgating the original Federal Rules, the Supreme Court stated that procedural uniformity is desirable because it allows lawyers in every state to learn and rely on a system of rules, which, in turn, produces an "increase in the efficiency of the administration of justice." ORDERS RE RULES OF PROCEDURE, 302 U.S. 783, 785 (1937). *See infra* notes 43-51 and accompanying text.

2. The *Erie* doctrine had its genesis in Erie R.R. v. Tompkins, 304 U.S. 64 (1938). *Erie* stands for the proposition that federal diversity courts must apply the substantive law of the forum state. This substance-procedure dichotomy, founded on considerations of federalism, see C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 55, at 255 (3d ed. 1976), is a shorthand version of the *Erie* doctrine. *See infra* notes 35-42 and accompanying text.

3. Guaranty Trust Co. v. York, 326 U.S. 99 (1945), greatly expanded the reach of the *Erie* doctrine by replacing the substance-procedure dichotomy with what is referred to as the "outcome determinative" test. This later variant of the *Erie* doctrine required federal diversity courts to follow state law if application of federal law would substantially affect the outcome of the litigation. *See infra* notes 53-54 and accompanying text.

4. 380 U.S. 460 (1965).

5. *Hanna* stands for the proposition that in a situation covered by a Federal Rule, the federal diversity court must apply the Rule even in the face of a conflicting state law unless the federal court finds that the Advisory Committee, Supreme Court, and Congress erred in their prima facie judgment that the Rule did not transgress either the Constitution or the Rules Enabling Act of 1934, ch. 651, 48 Stat. 1064 (current version at 28 U.S.C. § 2072 (1976)). 380 U.S. 460, 471 (1965). *See infra* notes 64-75 and accompany-

founded lower courts and legal scholars by failing to overrule *Ragan v. Merchants Transfer & Warehouse Co.*,[6] decided under the *Erie* doctrine and in apparent conflict with the Court's new perspective on the Federal Rules. Legal commentators debated *Ragan's* continued vitality,[7] lower courts split,[8] and both groups pleaded for Supreme Court guidance.[9]

The Supreme Court answered their pleas in *Walker v. Armco Steel Corp.*,[10] where the Court, relying on *Ragan*,[11] held that state commencement provisions,[12] rather than the Federal Rule,[13] toll state statutes of limitations in diversity of citizenship cases. The Court justified its affirmation of *Ragan* and use of the state provision by characterizing Federal Rule 3 as "not broad enough" to control the tolling issue.[14] The Court employed an *Erie* doctrine analysis,[15] finding no direct federal-state law conflict as required for application of the *Hanna* analysis.[16] The *Walker* Court's version of the direct conflict test, however, invites overly literal interpretations of the Federal Rules and

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ing text.

6. 337 U.S. 530 (1949). Chief Justice Warren characterized Rule 3, the Federal Rule involved in *Ragan*, as not broad enough to govern the issue of tolling the state statute of limitations. Rule 4(d)(1), in contrast, was considered explicit enough to govern service of process, the issue in *Hanna*. Hanna v. Plumer, 380 U.S. 460, 470 n.12 (1965). *See infra* notes 76-86 and accompanying text.

7. Professors Wright and Miller, for example, maintained that *Ragan* was still good law after *Hanna*. 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1057, at 191 (1969). *Contra* Zabin, *The Federal Rules in Diversity Cases:* Erie *in Retreat*, 53 A.B.A. J. 266, 268 (1967).

8. *Compare* Smith v. Peters, 482 F.2d 799 (6th Cir. 1973), *cert. denied*, 415 U.S. 989 (1974) (*Ragan* no longer good law), *with* Witherow v. Firestone Tire & Rubber Co., 530 F.2d 160 (3d Cir. 1976) (*Ragan* required application of state law).

9. *See* Walker v. Armco Steel Corp., 592 F.2d 1133 (10th Cir. 1979), *aff'd*, 446 U.S. 740 (1980). The appeals court in *Walker* viewed *Hanna* and *Ragan* as irreconcilable, reluctantly followed *Ragan*, and asked the Supreme Court to "clear away the dilemma which exists as a result of the conflict between *Ragan* and *Hanna*." *Id.* at 1136. *See* C. WRIGHT, *supra* note 2 § 59, at 277; Siegel, *The Federal Rules in Diversity Cases: Erie Implemented, Not Retarded*, 54 A.B.A. J. 172, 175 (1968); Comment, *Statutes of Limitation in Diversity Cases: For Whom the Statute Tolls*, 10 CAL. W.L. REV. 131, 132 (1973); Comment, *Federal Rule 3 and the Tolling of State Statutes of Limitations in Diversity Cases*, 20 STAN. L. REV. 1281, 1293-94 (1968).

10. 446 U.S. 740 (1980).

11. For a discussion of *Ragan*, see *infra* notes 55-63 and accompanying text.

12. OKLA. STAT. ANN. tit. 12, § 97 (West Supp. 1981). For the text of the statute, see *infra* note 21.

13. "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.

14. Walker v. Armco Steel Corp., 446 U.S. 740, 749-51 (1980).

15. For a discussion of *Erie*, see *infra* notes 35-42 and accompanying text.

16. For a discussion of *Hanna*, see *infra* notes 64-86 and accompanying text.

disuniformity in federal procedure. The Court's reliance on *Ragan,* clearly the product of earlier judicial theories no longer prevalent, will also confuse rather than clarify the already perplexing Federal Rules jurisprudence. The unfortunate result of *Walker* may be an unpredictable hybridization of federal and state procedure in federal diversity cases.

This article evaluates the *Walker* case in the context of *Erie* doctrine cases preceding it, and of later federal cases attempting to follow it. First, this article examines the facts and reasoning in *Walker.* Next, the article reviews the case law leading up to *Walker,* and then focuses on the flaws in the *Walker* analysis. After critically evaluating *Walker,* the article examines a Ninth Circuit decision interpreting *Walker.* Last, this article suggests that lower courts narrowly interpret *Walker,* restricting its scope to cases involving Federal Rule 3.

II. WALKER v. ARMCO STEEL CORP.

The factual circumstances in *Walker* are nearly identical to those in *Ragan.*[17] A nail fragment hit Walker in the eye on August 22, 1975.[18] Walker filed his complaint in federal district court[19] on August 19, 1977, three days before the two-year state statute of limitations would have expired. Summons issued the next day, but process was not served until December 1, 1977.[20] The district court dismissed the complaint on the authority of *Ragan,* holding that an Oklahoma statute requiring service of process to commence an action[21] was an integral part of the

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17. Indeed, Mr. Justice Marshall, writing for the majority in *Walker,* found the two cases "indistinguishable." Walker v. Armco Steel Corp., 446 U.S. 740, 748 (1980).

18. *Id.* at 741.

19. Walker v. Armco Steel Corp., 452 F. Supp. 243 (W.D. Okla. 1978).

20. Walker v. Armco Steel Corp., 447 U.S. 740, 742 (1980).

21. OKLA. STAT. ANN. tit. 12, § 97 (West Supp. 1981).

> An action shall be deemed commenced, within the meaning of this article, as to each defendant, at the date of the summons which is served on him, or on a codefendant, who is a joint contractor or otherwise united in interest with him. Where service by publication is proper, the action shall be deemed commenced at the date of the first publication. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this article, when the party faithfully, properly and diligently endeavors to procure service; but such attempt must be followed by the first publication or service of the summons, or if service is sought to be procured by mailing, but a receipt of certified mail containing summons, within sixty (60) days.

Id.

state's limitations statute.[22] The court reasoned that because it was part of the state's substantive law, the state commencement statute had to be applied. Feeling constrained by *Ragan*, the Tenth Circuit reluctantly agreed.[23]

The United States Supreme Court affirmed, holding that *Ragan*[24] is still good law, and that in diversity actions Rule 3 does not toll the state statute of limitations.[25] The Court used a two-part analysis. First, the Court found that the plain meaning of Rule 3, which simply states that an action is commenced when the complaint is filed,[26] indicated that it was not broad enough to govern the tolling issue.[27] To demonstrate the narrow sphere of Rule 3, the Court pointed out that its author, the Advisory Committee, raised but never answered the question of whether filing a complaint under Rule 3 also tolls the state statute of limitations.[28]

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22. Walker v. Armco Steel Corp., 452 F. Supp. 243, 245 (W.D. Okla. 1978).

23. Walker v. Armco Steel Corp., 592 F.2d 1133, 1136 (10th Cir. 1979). The court of appeals applied *Ragan* despite having concluded that *Ragan* relied on the *York* outcome determinative test in an area of pure procedure, and therefore is irreconcilable with *Hanna*. *Id.* at 1135-36. Finding that *Ragan* could not have survived *Hanna's* redefinition of the relationship between the *Erie* doctrine and the Federal Rules, yet acknowledging that *Hanna* had not overruled *Ragan*, the court asked the Supreme Court to "clear away the dilemma." *Id.* For a discussion of *Ragan* and *Hanna*, see *infra* notes 55-86 and accompanying text.

24. For a discussion of *Ragan*, see *infra* notes 55-63 and accompanying text.

25. "In our view, in diversity actions, Rule 3 governs the date from which various timing requirements of the federal rules begin to run, but does not affect state statutes of limitations." Walker v. Armco Steel Corp., 446 U.S. 740, 751 (1980). The Court cited 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE, CIVIL § 1057, at 191 (1969), as authority for this proposition.

26. "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.

27. Walker v. Armco Steel Corp., 446 U.S. 740, 749-50, 750 n.9 (1980).

28. Id. at 750 n.10.

> When a federal or state statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4(a) that the clerk shall forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

446 U.S. at 750 n.10 (quoting Note of the Advisory Comm. on the Rules).

One commentator attributed the Rule's lack of explicitness regarding its tolling effect to the Committee's concern that Rule 3 not infringe on substantive rights in violation of the *Erie* doctrine and of the Rules Enabling Act. The Supreme Court, however,

Second, the Court relied on a variant of the *Erie* doctrine[29] taken from *Ragan,* the integral part test.[30] Concluding that the state commencement provision was an integral part of the substantive policies underlying the state statute of limitations,[31] the Court adhered to *Ragan*[32] and applied the state statute.[33] The *Walker* Court concluded that absent a controlling Federal Rule, a diversity action that would have been barred in state court by the limitations statute should not be allowed to proceed in federal court "solely because of the fortuity that there is diversity of citizenship between the litigants."[34]

III. Erie And The Federal Rules

Walker has its philosophical roots in the 1938 landmark case of *Erie Railroad v. Tompkins,*[35] referred to in a later Supreme Court decision as "one of the modern cornerstones of our federalism."[36] *Erie* overruled *Swift v. Tyson,*[37] a case that

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rejected this narrow view of the authority of the Act in Sibbach v. Wilson & Co., 312 U.S. 1 (1940). In *Sibbach,* the Court held that the proper test for determining whether a Rule is within the scope of the Rules Enabling Act is whether it "really regulates procedure." *Id.* at 14. *See* Comment, *Amending the Rules of Civil Procedure After* Hanna v. Plumer*: Rule 3,* 42 N.Y.U.L. Rev. 1139, 1146 (1967). For a discussion of *Sibbach* see *infra* notes 50-51 and accompanying text.

29. *See infra* notes 35-42 and accompanying text.

30. The integral part test first appeared in the Tenth Circuit opinion in *Ragan,* and was adopted by the Supreme Court as an additional basis for its affirmance. Ragan v. Merchants Transfer & Warehouse, 337 U.S. 530, 534 (1949). For a discussion of *Ragan* see *infra* notes 55-63 and accompanying text.

31. Under Guaranty Trust Co. v. York, 326 U.S. 99 (1945), state statutes of limitations are substantive law, binding on federal diversity courts. *See infra* notes 52-54 and accompanying text.

32. *See infra* notes 55-63 and accompanying text.

33. Walker v. Armco Steel Corp., 446 U.S. 740, 751-52 (1980). "[T]he Oklahoma statute is a statement of substantive decision by that state," *id.* at 751, "part and parcel of the statute of limitations." *Id.* at 752. The actual service requirement was characterized as promoting the same policy goals as the statute of limitations: establishing a deadline after which the defendant may have peace of mind, and avoiding the unfairness of forcing him to defend an old claim. *Id.* "[R]ule 3 does not replace such policy determinations found in state law." *Id.*

34. *Id.* at 753.

35. 304 U.S. 64 (1938). The *Erie* doctrine so permeates modern procedural jurisprudence that Judge Learned Hand once stated: "I don't suppose a civil appeal can now be argued to us without counsel sooner or later quoting large portions of Erie Railroad v. Tompkins." Clark, *State Law in the Federal Courts: The Brooding Omnipresence of* Erie v. Tompkins, 55 Yale L.J. 267, 269 (1946).

36. Hanna v. Plumer, 380 U.S. 460, 474 (1965)(Harlan, J., concurring). *See* C. Wright, *supra* note 2, § 55, at 255. "It is impossible to overstate the importance of the *Erie* decision. It . . . goes to the heart of the relations between the federal government and the states." Other scholars concur. "[E]rie is by no means simply a case . . . . [I]t is

had interpreted the Rules of Decision Act[38] as requiring application of only statutory and not state decisional law in federal diversity cases. Discrimination in favor of non-citizens able to "forum-shop" between the federal and state courts,[39] as well as constitutional considerations of federalism,[40] prompted the *Erie* Court to rule that federal diversity courts must apply the substantive decisional as well as the substantive statutory law of the forum state.[41] Federal diversity courts could continue, however, to apply federal procedural law,[42] namely, the Federal Rules of Civil Procedure enacted the same year.

The Supreme Court adopted the Federal Rules of Civil Procedure in order to bring predictability and uniformity to federal practice.[43] Believing the Federal Rules to be the quintessence of procedure and therefore firmly fixed on the procedural side of

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the very essence of our federalism." Ely, *The Irrepressible Myth of* Erie, 87 HARV. L. REV. 693, 695 (1974). *Accord* Hill, *The* Erie *Doctrine and the Constitution*, 53 Nw. U.L. REV. 427, 427-28 (1958); Stason, *Choice of Law Within the Federal System:* Erie *Versus* Hanna, 52 CORNELL L.Q. 377, 380 (1967).

37. 41 U.S. (16 Pet.) 1 (1842).

38. "[T]he laws of the several states, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply." Judiciary Act of 1789, ch. 20, § 34, 1 Stat. 92 (current version at 28 U.S.C. § 1652 (1976)).

39. Forum shopping reached its apex in Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518 (1928). In *Black & White*, a Kentucky corporation reincorporated in Tennessee and created diversity of citizenship between itself and its main competitor in order to enforce a contract in federal court that would have been declared void if sued upon in a Kentucky state court. *But see* Hill, *supra* note 36. The author argues that because the purpose underlying the constitutional provision for diversity of citizenship jurisdiction was to provide litigants with a choice of tribunals, the elimination of forum shopping could not have been the Court's primary objective in *Erie*.

40. *See supra* note 36.

41. Erie R.R. v. Tompkins, 304 U.S. 64 (1938). "Except in matters governed by the Federal Constitution or by the Acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." *Id.* at 78. In so ruling, the Court returned to the states power reserved to them by the tenth amendment that "had for nearly a century been exercised by the federal government." *Id.* at 78-80. For a thorough analysis of *Erie's* constitutional basis, see C. WRIGHT, *supra* note 2, § 56, and Hill, *supra* note 36.

42. "[N]o one doubts federal control over procedure." Erie R.R. v. Tompkins, 304 U.S. 64, 92 (1938) (Reed, J., concurring). See *infra* note 45.

43. *See supra* note 1. "One of the shaping purposes of the Federal Rules is to bring about uniformity in the federal courts by getting away from local rules." Hanna v. Plumer, 380 U.S. 460 (1965) (quoting Lumbermen's Mut. Casualty Co. v. Wright, 322 F.2d 759, 764 (5th Cir. 1963)). *See* Merrigan, Erie *to* York *to* Ragan—*A Triple Play on the Federal Rules*, 3 VAND. L. REV. 711, 715 (1950); Comment, *supra* note 28, at 1139.

the *Erie* substance-procedure dichotomy,[44] the Court may not have foreseen the possibility of the *Erie* doctrine and the Rules clashing over matters classifiable as either substance or procedure.[45] That the Court considered the Federal Rules to be presumptively procedural is supported by language in the Rules Enabling Act. The Rules Enabling Act, the legislation authorizing the Federal Rules, provides that the Rules shall not "abridge, enlarge, or modify substantive rights of any litigant."[46] Had the Court regarded this language as the appropriate standard by which to judge the Federal Rules, requiring, in each case, an examination of the Rule and a search for substantive policy underlying its state counterpart, the Rules Enabling Act would have been a "thoroughly self-defeating piece of legislation."[47] A more reasonable conclusion is that the Court took note of the Act's limiting language and determined the Federal Rules to be federal procedural law, that, under the *Erie* doctrine,[48] need not give way to conflicting state procedural law.[49]

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44. *See supra* notes 35-42 and accompanying text.

45. Indeed, Mr. Justice Reed stated in his concurring opinion in *Erie* that while the substance-procedure distinction is sometimes blurred, "no one doubts federal power over procedure." Erie R.R. v. Tompkins, 304 U.S. 64, 92 (1938) (Reed, J., concurring). Nevertheless, after *Erie*, some scholars feared that the Court would abandon the *Erie* substance-procedure dichotomy and allow state procedure to supplant the Federal Rules, thereby destroying the uniformity sought by the drafters of the new system of federal procedure. *See* Clark, *The* Tompkins *Case and the Federal Rules*, 24 J. AM. JUDICATURE SOC. 158 (1941); Tunks, *Categorization and Federalism: "Substance" and "Procedure" After* Erie Railroad v. Tompkins, 34 ILL. L. REV. 271 (1939).

46. Rules Enabling Act of 1934, ch. 651, 48 Stat. 1064 (current version at 28 U.S.C. § 2072 (1976)).

47. Hill, *supra* note 36, at 580, 585.

48. *See supra* notes 35-42 and accompanying text.

49. The view that the Rules are presumptively procedural for the purpose of the *Erie* substance-procedure dichotomy is further buttressed by the practical realization that any system of procedure contains some elements of substantive policy and will, on occasion, unavoidably alter state substantive law. Hill, *supra* note 36, at 580, 585. *Accord* Comment, *supra* note 28, at 1146.

For the view that the limiting language of the Rules Enabling Act should be regarded as a check on the operation of the Federal Rules, see Ely, *supra* note 36, at 698, 722-23, discussed *infra* note 51, and McCoid, *Hanna v. Plumer: The Erie Doctrine Changes Shape*, 51 VA. L. REV. 884 (1965). *See also* Stason, *supra* note 36. Stason argues that the *Sibbach* approach violates the separation of powers doctrine because resolving the substance-procedure dichotomy issue involves considerations of federalism under the 10th amendment, and is therefore necessarily a matter for judicial determination. *Id.* at 395, 403-04. This analysis, however, ignores the Court's promulgations of the Federal Rules, which presumably entailed the Court's attention to their procedural or substantive nature under the *Erie* substance-procedure dichotomy test. The Court performed its reviewing function at this stage, and evidently found the Rules constitutionally valid under *Erie*.

Accordingly, in its first major decision interpreting the Rules, *Sibbach v. Wilson & Co.*,[50] the Court rejected the Rules Enabling Act proviso as the standard for judging the Federal Rules, adopting the more liberal standard of whether the Rule "really regulates procedure."[51]

Although the Federal Rules are by definition procedural and the *Erie* doctrine[52] requires application of only substantive state law, the integrity of the new procedural system was jeopardized by two decisions rendered in the 1940's that vastly expanded the reach of the *Erie* doctrine. In *Guaranty Trust Co. v. York*,[53] the Court enunciated the "outcome determinative" test for resolving state-federal conflicts of law. Under this later rendition of the *Erie* doctrine, a federal diversity court is required to apply state law, procedural or substantive, if its use in place of federal law would change the result in a particular case.[54]

Guided by the *York* outcome determinative test, the Court in *Ragan v. Merchants Transfer & Warehouse Co.*[55] concluded

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50. 312 U.S. 1 (1941).

51. *Id.* at 14. This approach requires a court to focus only on the procedural nature of the Rule, without reference to substantive state policies on which its operation might infringe.

Professor Ely criticizes the *Sibbach* Court for assuming that the categories of substance and procedure are mutually exclusive, arguing that a Rule can "really regulate procedure" and also abridge substantive rights. In his view, the appropriate standard for judging the validity of the Rules is the Rules Enabling Act, asking first, whether it regulates practice and procedure, and second, whether it does so without altering substantive rights. The *Sibbach* analysis reaches only the first question and assumes the second has been answered in the affirmative. Professor Ely further argues that by ignoring the second sentence regarding abridgement of substantive rights, *Sibbach* "obliterated" the Act, creating a need for limits on the Federal Rules. This need was filled by applying the *Erie* doctrine to cases involving Federal Rules, such as Ragan v. Merchants Transfer Co., 377 U.S. 530 (1949), rather than by reconsidering the liberal *Sibbach* test. Ely, *supra* note 36, at 698-99.

52. *See supra* notes 35-42 and accompanying text.

53. 326 U.S. 99 (1945).

54. *Id.* at 109. Scholars concerned about uniform application of the Federal Rules severely criticized *York's* application to cases involving the Rules. *See* C.WRIGHT *supra* note 2, § 55, at 256; Merrigan, *supra* note 43 at 717-18. *See* Clark, *Federal Procedural Reform and States' Rights: To a More Perfect Union*, 40 TEX. L. REV. 211 (1961). Judge Clark commented that *York* carried the delicate question of federalism "to an absurd extreme." *Id.* at 220. Professor Hart remarked that the outcome test "had no readily apparent stopping place." Hart, *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489, 512 (1954). Proponents of limiting federal power, however, praised *York* for its easy application and predictability. *E.g.*, Stason, *supra* note 36, at 391.

55. 337 U.S. 530 (1949). *Ragan* involved an automobile accident which occurred on October 1, 1943. The plaintiff filed the complaint in federal court on September 4, 1945, well within the Kansas two-year limitations statute. KAN. GEN. STAT. § 60-306(3) (1935) (current version at KAN. STAT. ANN. § 60-513(4) (1976 Ann.)). Process, however, was not

that the use of Rule 3[56] as a tolling provision would have varied the outcome. Therefore, Rule 3 and its uniform application in federal courts must yield to the state commencement law.[57] Subordinate to the *Ragan* Court's *York* outcome determinative rationale[58] was an additional theory derived from the lower court opinion,[59] the integral part test. The Court applied the state service provision, reasoning that it was an integral part of the state limitations statute,[60] considered substantive law under *York*,[61] and therefore binding on federal diversity courts under the *Erie* substance-procedure analysis.[62] In cases involving both

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served on the defendant until December 28, 1945. 337 U.S. at 531. The Tenth Circuit held that the Kansas commencement provision, KAN. GEN. STAT. § 60-306(8) (1949) (current version at § 60-203 (1976 Ann.)), requiring receipt of summons by the defendant in order to commence the action, rather than Rule 3, tolls the limitations statute. Ragan v. Merchants Transfer & Warehouse Co., 170 F.2d 987 (10th Cir. 1948). The Supreme Court affirmed. 337 U.S. 530 (1949).

56. "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.

57. Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530 (1949). "We cannot give it longer life in the federal court than it would have had in the state court . . . ." *Id.* at 533-34.

58. The *Ragan* Court's heavy reliance on the *York* test for judging the Federal Rules led many jurists and scholars to conclude that *Ragan* was no longer good law after *Hanna*, since that Court unequivocally rejected the *York* outcome determinative test where the federal-state law conflict involves Federal Rules. *See, e.g.*, Zabin, *supra* note 7 at 268. For a discussion of the *Hanna* Court's treatment of *Ragan*, see *infra* notes 76-86 and accompanying text.

59. Ragan v. Merchants Transfer & Warehouse Co., 170 F.2d 987 (10th Cir. 1948).

60. Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530, 534 (1949).

61. For a discussion of *York*, *see supra* notes 52-54 and accompanying text.

62. For a discussion of *Erie*, *see supra* notes 35-42 and accompanying text.

Several scholars have argued that the integral part analysis was superfluous to the *Ragan* result. *See* Comment, *Statutes of Limitations in Diversity Cases: For Whom the Statute Tolls*, 10 CAL. W.L. REV. 131, 138-39 (1973); Comment, *Federal Rule 3 and the Tolling of State Statutes of Limitations in Diversity Cases*, 20 STAN. L. REV. 1281, 1283 (1968).

One commentator theorized that because the precise foundation on which *Ragan* rested was so uncertain, perhaps the Court's conclusion was based on an unexpressed third rationale: application of Rule 3 in this situation would have "abridged, enlarged, or modified substantive rights" in violation of the Rules Enabling Act. Hill, *supra* note 36 at 430. However, this explanation is implausible because the opinion made no reference to the Act, much less to its limiting provision. The analysis is also flawed because the Court eight years earlier in Sibbach v. Wilson & Co., 312 U.S. 1 (1949), see notes 50 & 51, *supra*, held that the test for validity of the Rules is not whether they alter substantive law, but whether they "really regulate procedure." *Id.* at 14. *See supra* notes 50-51. Some commentators hold the view that the proper standard for the Rules is whether the operation of the Rule would infringe on substantive policies underlying the Rule's state counterpart, see Ely, *supra* note 36, at 698, 722-23; McCoid, *supra* note 49, at 884; Stason, *supra* note 36, at 395-96. Professor Ely agrees with the *Ragan* result, but argues that it was arrived at incorrectly through the *Erie* route rather than by using the Ena-

the *Erie* doctrine and the Federal Rules, the Court seemed to be favoring the *Erie* doctrine, and the Federal Rules were rapidly losing ground.[63]

Sixteen years later, though, in *Hanna v. Plumer*,[64] the Court removed the Federal Rules from the jurisdiction of the *Erie* doctrine, announcing a new three-part analysis to judge their validity.[65] First, the court must determine whether the Federal Rule is broad enough to govern the issue in dispute.[66] If it does apply, then the Rule supplants any state law with which it directly collides.[67] Second, the court must decide whether the Rule regulates procedure within the limitations set out in the Rules Enabling Act.[68] The standard derived from *Sibbach v. Wilson & Co.*[69] is whether the Rule "really regulates procedure."[70] Third,

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bling Act standard.

63. Scholars concerned with the integrity of the Federal Rules immediately condemned *Ragan*. *See* Driver, *The Federal Civil Rules in Diversity Cases*, 30 OR. L. REV. 69 (1959); Gavit, *States' Rights and Federal Procedure*, 25 IND. L.J. 1 (1949); Note, *The Erie Case and the Federal Rules—A Prediction*, 39 GEO. L.J. 600 (1951).

For litigants yearning for predictable rules on which to rely, "there can be no solace here," one concluded. 34 CORNELL L.Q. 420, 421 (1949). This "*Erie* invasion of the Federal Rules," as one writer dubbed it, engendered unprecedented uncertainty and confusion among attorneys. *See* Merrigan, *supra* note 43. "Practising attorneys are unable to determine which of the Federal Rules will remain in full effect and which might be rejected by the courts on the theory that they conflict in a substantial way with some state law. Every important step in a federal diversity case is taken today at a calculated risk." *Id.* at 711-12.

64. 380 U.S. 460. Some praised *Hanna* as guaranteeing the integrity of the federal procedural system, *see, e.g.*, Zabin, *supra* note 7, at 269, while others condemned it as fundamentally inconsistent with the constitutional foundation of the *Erie* doctrine, *see, e.g.*, Stason, *supra* note 36. Stason likens the *Hanna* decision to the discredited *Swift* doctrine because both attempt to achieve federal uniformity at the cost of invading state's rights and violate the equal protection rights of non-diverse litigants. *Id.* at 401. The author contends that *Erie* reaffirms the federal system while *Hanna* saps its strength. *Id.* at 377.

65. In *Hanna*, the plaintiff served process by leaving copies of the summons and complaint with the spouse of the executor of the decedent-defendant's estate, pursuant to FED. R. CIV. P. 4(d)(1). *See infra* note 72. State law, however, required in-hand service of process. MASS. GEN. LAW. ANN. ch. 197, § 9 (West 1958). *See infra* note 73. The district court dismissed the complaint as time-barred under the state service statute and statute of limitations, and the court of appeals affirmed. 331 F.2d 157 (1st Cir. 1964). The Supreme Court reversed. Hanna v. Plumer, 380 U.S. 460 (1965).

66. Hanna v. Plumer, 380 U.S. 460, 470 (1965).

67. *Id.* See *infra* notes 100-12 and accompanying text for an evaluation of the direct collision test, as applied by *Walker*.

68. Hanna v. Plumer, 380 U.S. 460, 470-71 (1965). See *supra* notes 46-49 and accompanying text for a discussion of the Rules Enabling Act.

69. 312 U.S. 1 (1949).

70. *Id.* at 14. The Court implicitly rejected as a standard the Rules Enabling Act's proviso that the Rules cannot "abridge, enlarge, or modify" state substantive rights. See

the court must inquire whether the Rule is the product of a constitutional exercise of Congressional authority. The test for constitutionality is whether the Rule is "rationally capable of classification as procedural."[71] Finding that Federal Rule 4(d)(1)[72] "unavoidably clashed" with the state service of process statute,[73] that Rule 4(d)(1) did not exceed the scope of the Rules Enabling Act, and that the Rule was constitutional,[74] the *Hanna* Court

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supra notes 49 & 51, for a discussion of this standard. The Court instead chose the liberal *Sibbach* test, discussed *supra* notes 50-51 and accompanying text.

Critics of the *Hanna* decision contend the Court's reliance on *Sibbach* is misplaced because *Sibbach* did not involve a conflict between state and federal law, but only the validity of Rules 35 and 37. McCoid, *supra* note 49, at 396; Stason, *supra* note 36, at 905.

71. Hanna v. Plumer, 380 U.S. 460, 472 (1965). The Court found constitutional authority for enactment of the Federal Rules in U.S. CONST. art. III, providing for a federal court system, augmented by U.S. CONST. art. I, § 8, the Necessary and Proper Clause. The Necessary and Proper Clause gave Congress the power to make procedural rules for federal courts and to regulate matters neither substantive nor procedural but "rationally capable of classification as either." 380 U.S. at 472.

The Court also provided the Federal Rules with a strong presumption of validity. The Court held that a federal court must apply the Federal Rule even in face of a conflicting state law with substantive aspects, unless the court finds that the Advisory Committee, the Supreme Court, and Congress erred in their prima facie judgment that the Rule did not transgress either the Enabling Act or Constitution. *Id.*

See also 27 OHIO ST. L.J. 345 (1966). The author elaborates on the *Hanna* presumption of validity, stating that unless the Rule clearly regulates substance, it will be presumed procedural and must be applied in lieu of the conflicting state statute. *Id.* at 351. *See also* Zabin, *supra* note 7. Zabin states that the test for validity of the Enabling Act is the same as that for any statute: whether the statute is appropriate and plainly adapted to effectuate its objective. *But cf.* Siegel, *supra* note 9, at 173 (*Hanna* did not foreclose the possibility that the presumption of validity protecting a Rule could be rebutted by demonstrating its infringement on substantive rights in violation of the *Erie* doctrine). Critics of the *Hanna* presumption argue that the question of whether a Rule alters substantive state policy in violation of federalism, the *Erie* doctrine, and the Rules Enabling Act can only be answered by examining the purposes underlying the contrary state law. *See* McCoid, *supra* note 49, at 901.

72. FED. R. CIV. P. 4(d)(1) provides:

> The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:
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> (1) Upon an individual other than an infant or incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. . . .

73. MASS. GEN. LAWS ANN. ch. 197, § 9 (West 1958), provides that the plaintiff must make personal service upon the executor or administrator of an estate within one year of the date he obtained the bond, or the plaintiff must file in probate court a notice stating the name of the estate, name of the creditor, amount of the claim, and the court in which the action was brought.

74. Hanna v. Plumer, 380 U.S. 460, 463-64 (1965). The Rule "neither exceeded the Congressional mandate embodied in the Rules Enabling Act nor transgressed Constitutional bounds. . . ." *Id.*

held that Rule 4(d)(1) controlled.[75]

The *Hanna* Court did not, however, overrule *Ragan*.[76] The Court instead distinguished *Ragan* as a case involving a clash between a Federal Rule and a state statute that was not "unavoidable."[77] Rule 3, then, did not govern the tolling issue, and the reasoning in the last two parts of the Court's new analytical formula did not apply.

The *Hanna* Court's characterization of *Ragan* is misleading[78] for two reasons. First, nowhere in its opinion did the *Ragan* Court intimate that its reasoning was based on a narrow interpretation of Rule 3.[79] Rather, the *Ragan* Court presumed that Rule 3 governed tolling, and disposed of the case under the *York* outcome determinative test.[80] Furthermore, the Court in *Ragan* acknowledged that Rule 3 tolls limitations statutes in federal question cases not bound by the *Erie* doctrine,[81] and thus found that Rule 3 would otherwise have reached the tolling issue.[82] Second, the *Hanna* Court drew a dubious distinction between

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75. *Id.* at 464.

76. *See supra* notes 55-62 and accompanying text.

77. Hanna v. Plumer, 380 U.S. 460, 470 & n.12 (1965).

78. *Id.* This creative characterization of *Ragan* may not have been "good history," Professor Ely comments, but it did allow the Court to conveniently reduce *Ragan's* value as authority for the view that the *Erie* doctrine provides a check on the Federal Rules, without involving the Court in a full scale analysis of the Rules Enabling Act. Ely, *supra* note 36, at 732 n.209.

In his concurring opinion in *Hanna*, Justice Harlan recognized the flaws in the majority's characterization of *Ragan*. He contended that "if still good law," *Ragan* would have required the opposite result. Hanna v. Plumer, 380 U.S. 460, 476 (1965) (Harlan, J., concurring). He argued that *Ragan* should have been overruled because it "was *wrong*." *Id.* at 477 (emphasis added).

79. "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.

80. *See supra* notes 55-62 and accompanying text. *See* Comment, *supra* note 28, at 1144. Had the *Ragan* Court disposed of the tolling issue on the ground that Rule 3 was irrelevant, its discussion of the *York* outcome determinative test, see *supra* notes 52-54 and accompanying text, and of the integral part test would have been unnecessary. *See* Comment, *A Restrained Adherence to* Ragan*—States Versus Federal Rules When Tolling State Limitations Periods in Diversity Cases*, 18 S.D.L. REV. 185, 193-94 (1973); Comment, *Federal Rule 3 and the Tolling of State Statutes of Limitations in Diversity Cases*, 20 STAN. L. REV. 1281, 1287 n.41 (1968).

81. Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530, 533 (1949).

The *Walker* Court did not answer the question of whether Rule 3 tolls statutes of limitations when jurisdiction is based on a federal question. Walker v. Armco Steel Corp., 447 U.S. 740, 751 n.12 (1980). However, in Board of Regents of the Univ. of New York v. Tomanio, 446 U.S. 478 (1980), decided two weeks before *Walker*, the Court held an action based on the Civil Rights Act of 1871, 42 U.S.C. § 1983, time barred by the New York statute of limitations.

82. *See* Comment, *supra* note 28, at 1144; *see* authorities cited *supra* note 80.

the two Federal Rules involved in *Hanna* and *Ragan*. Concluding that Rule 4(d)(1)[83] "implicitly, but with unmistakable clarity" rejects in-hand service of process, the *Hanna* Court found the Rule sufficiently broad and allowed it to supplant the state provision.[84] Applying the same reasoning to *Ragan*, the Court could have found that by defining when an action is commenced, Rule 3 implicitly, but with the same degree of clarity, tolls the limitations statute.[85] By distinguishing *Ragan* in this intellectually unsatisfying fashion, the Court caused further confusion among courts and commentators over *Ragan's* precedential import.[86]

IV. WALKER: FLAWED ANALYSIS

The Court in *Walker* may have eliminated lower court confusion over the applicability of Rule 3 at the expense of greater lower court uncertainty regarding the applicability of all the Federal Rules. This uncertainty derives from two flaws in the Court's analysis: its reliance on *Ragan*[87] and on a plain meaning

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83. For text of statute, see *supra* note 73.

84. Hanna v. Plumer, 380 U.S. 460, 470 (1965).

85. For an elaboration of this argument, see 27 OHIO ST. L.J. 345, 353 (1966).

86. Notwithstanding the *Hanna* Court's attempt to distinguish *Ragan*, some commentators and courts reasoned that *Ragan*, whose result turned on the *York* outcome determinative test, *see supra* notes 52-54 and accompanying text, could not possibly have survived *Hanna's* redefinition of the relationship between *Erie* and the Federal Rules. They concluded that *Hanna* had overruled *Ragan sub silentio*. *See, e.g.*, Zabin, *supra* note 7 at 268.

Some lower courts agreed. *See, e.g.*, Ingram v. Kumar, 585 F.2d 566 (2d Cir. 1978), *cert. denied*, 440 U.S. 940 (1979); Smith v. Peters, 482 F.2d 799 (6th Cir. 1973), *cert. denied*, 415 U.S. 989 (1974); Sylvestri v. Warner & Swasey Co., 398 F.2d 598 (2d Cir. 1968); Manatee v. Cablevision Corp. v. Pierson, 433 F. Supp. 571 (D.D.C. 1977); Benn v. Linden Crane Co., 370 F. Supp. 1269 (E.D. Pa. 1973).

Other courts reasoned that because *Hanna* had intentionally distinguished rather than overruled *Ragan*, they were bound to apply the state rule. *See, e.g.*, Rose v. K.K. Masutoku Toy Factory Co., 597 F.2d 215 (10th Cir. 1979); Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118 (10th Cir.), *cert. denied*, 444 U.S. 856 (1979); Witherow v. Firestone Tire & Rubber Co., 530 F.2d 160 (3d Cir. 1976); Anderson v. Papillion, 445 F.2d 841 (5th Cir. 1971) (*per curiam*); Groninger v. Davison, 364 F.2d 638 (8th Cir. 1966); Sylvester v. Messler, 351 F.2d 472 (6th Cir. 1965) (*per curiam*), *cert. denied*, 382 U.S. 1011 (1962).

Still other courts acknowledged that *Ragan* was valid, but were able to distinguish the facts in their cases from *Ragan*. *See, e.g.*, Prashar v. Volkswagan of America, Inc., 480 F.2d 947, 953 (8th Cir. 1973), *cert. denied*, 415 U.S. 994 (1974); Chappell v. Rouch, 448 F.2d 446 (10th Cir. 1971).

87. For an analysis of *Walker*, see *supra* notes 17-34 and acccompanying text. For a discussion of *Ragan*, see *supra* notes 55-62 and accompanying text. Alonzo v. AFC Property Management, Inc., 643 F.2d 578 (9th Cir. 1981), demonstrates the difficulty in following the *Walker* analysis. *See infra* notes 119-137 and accompanying text.

analysis of the scope of the Federal Rule.[88]

The *Walker* Court's strong affirmance of *Ragan* could easily bewilder a lower court attempting to reconcile *Ragan* with the later *Erie* doctrine cases. As did the Court in *Hanna,* the *Walker* Court explained *Ragan* as a case where the Federal Rule was not broad enough to control the disputed issue, tolling the limitations statute.[89] This direct collision analysis,[90] however, is nowhere found in the brief *Ragan* opinion. Rather, *Ragan* turned primarily on a rather mechanistic application of the *York* outcome determinative test.[91] The Court's revisionism creates a situation where a lower federal court judge, seeking to grasp *Ragan's* precedential significance, would have to disregard the actual *Ragan* opinion, and instead seek its modern meaning within the pages of *Hanna* and *Walker.*

The meaning of a particular judicial decision does not, of course, derive entirely from the opinion itself. Modern legal scholars have demonstrated that the full significance of a case unfolds only when the case is viewed in the context of other relevant decisions.[92] This is because the common law is not simply a static compilation of independent rules, but an integrated body of coordinated principles, continually evolving as new decisions join its ranks.[93] It follows from the notion of a dynamic, chang-

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88. *See supra* notes 26-28 and accompanying text. For an evaluation of the plain meaning analysis as applied to the direct collision test, see *infra* notes 89-112 and accompanying text.

89. *See supra* notes 26-28 and accompanying text.

90. The "direct collision" test is part one of the *Hanna* three-part analysis. *See supra* notes 64-75 and accompanying text. Under part two, the court asks whether the Rule exceeds the limitations set forth in the Rules Enabling Act. *Id. See also supra* notes 43-51 and accompanying text. The third part of the analysis involves an inquiry into the constitutionality of the Rule. *See supra* note 71 and accompanying text.

91. *See supra* notes 55-57 and accompanying text.

92. *See, e.g.,* A. HARARI, THE PLACE OF NEGLIGENCE IN THE LAW OF TORTS 11-18 (1962). "[T]he significance of any decision emerges only when it is seen both in the special context of the case in which it was given and in the wider context of all other relevant decisions." *Id.* at 15.

An earlier view held that the meaning of a case consisted of its material facts plus the decision, without regard to other relevant law. This perspective was prevalent among legal scholars during the late nineteenth century, when the notion that law is a science had a significant currency. See C. LANGDELL, SELECTION OF CASES ON THE LAW OF CONTRACTS v-vii (1871), *reprinted in* S. PRESSER & J. ZAINALDIN, LAW AND AMERICAN HISTORY 657 (1980). Most modern legal historians reject this view that law develops autonomously from social forces. "Lawyers and judges raised on the method, . . . came to speak of law mainly in terms of a dry, arid logic, divorced from society and life." L. FRIEDMAN, A HISTORY OF AMERICAN LAW 535 (1973).

93. "[E]very decision of a court whose decisions are binding as precedents, which

ing law that the principle of a case, its *ratio decidendi,* also changes as new cases are added to the body of precedent. A case's *ratio decidendi,* then, is the rule of law the case will support when harmonized with all relevant prior and subsequent decisions.[94]

The *Walker* and *Hanna* Courts did not, however, merely harmonize *Ragan* with their more modern pronouncements on the *Erie* doctrine. Rather, they invented a new legal theory nowhere alluded to in the *Ragan* opinion.[95] This is not the gradual, evolutionary process by which the common law develops, but a serious distortion of history that failed to reconcile the cases in an intellectually satisfying fashion.

The *Walker* Court's affirmance of *Ragan* may have stemmed from legitimate yet misdirected judicial concerns. Courts are traditionally averse to overruling previous decisions, preferring instead to allow the law to change in an evolutionary fashion by integrating new principles into the existing body of precedent. This general predisposition toward steady and orderly legal development reflects society's conception of law as embodying relatively stable and internally consistent legal standards, whose application to similar cases yields similar results.[96] The Court in *Walker* and *Hanna* may have decided to reaffirm *Ragan* despite the Court's later, radical departure from *Ragan's* theoretical approach in order to preserve this public perception of a stable and reliable common law.

The popular conception of a relatively stable common law, however, would have been better preserved by overruling *Ragan,* rather than attempting to force it into *Hanna's* new legal mold. Overruling a discordant decision defines the boundaries and confirms the correctness of the coordinated decisional law. Distinguishing and affirming it, in contrast, further confuses lower courts and commentators about the precise contours of the

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has not been reversed by a superior court, is in accordance with the law . . . . [W]hat we mean by 'the law' are all these decisions pieced together." A. HARARI, *supra* note 92, at 13.

94. This is the definition of *ratio decidendi* offered by Abraham Harari. *Id.* at 17.

95. The determinative theory of the *Ragan* result was derived from Guaranty Trust Co. v. York, 326 U.S. 99 (1945). *See supra* notes 52-54 and accompanying text.

96. See Welker, *Judging the Judges: A Case Study in Judicial Responsibility,* 5 U. PUGET SOUND L. REV. 47 (1981). Welker discusses the five social policy goals underlying the doctrine of *stare decisis*: ensuring equal treatment of litigants; encouraging public reliance on existing laws; providing for stability in legal standards; providing judicial efficiency; and inspiring public confidence in the legal system. *Id.* at 51-54.

reshaped legal paradigm.[97] The lower court confusion is inevitably translated into inconsistent outcomes in similar cases, creating the very instability and discontinuity in the law that undermines public confidence in the legal system. Instead of trying to somehow fit *Ragan* into the new *Hanna* approach to the Federal Rules, the *Walker* Court should have acknowledged *Ragan's* total dependence on the York outcome determinative test,[98] an approach thoroughly repudiated in *Hanna,*[99] and quietly overruled the troublesome case.

The *Walker* Court's reliance on a plain meaning analysis for determining whether the relevant Federal Rule and state statute directly collide[100] is similarly problematic. First, the Court failed to apply its plain meaning analysis consistently. The plain meaning rule asserts that words have core meanings that remain constant regardless of the context in which they are used.[101] Adherence to this view would have required the Court to give Rule 3 the same interpretation in diversity cases as in federal question cases. This is obvious because the literal language of the Rule, to which the plain meaning theory ascribes paramount importance, remains constant whether applied in diversity or federal question cases. The *Walker* Court acknowledged, however, that Rule 3[102] may toll limitations statutes in actions based on federal questions.[103] The Court thereby recognized that the meaning of Rule 3 may change as it shifts contexts, directly contradicting the basic tenet of the plain meaning rule.

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97. For a discussion of a case evidencing such confusion, see *infra* notes 119-137 and accompanying text.

98. For a discussion of *Ragan* and *York,* see *supra* notes 52-63 and accompanying text.

99. For an evaluation of *Hanna* see *supra* notes 64-75 and accompanying text.

100. "The Federal Rules should be given their plain meaning. If a direct collision with state law arises from that plain meaning, then the analysis developed in *Hanna v. Plumer* applies." Walker v. Armco Steel Corp., 446 U.S. 740, 750 (1980). For a discussion of *Walker's* reliance on the direct collision test, see *supra* notes 26-28 and accompanying text. The direct collision analysis inquires whether the relevant Federal Rule and state provision directly collide. If they do, then the Rule controls, provided it meets the last two parts of the *Hanna* analysis, *viz.*, it conforms to the Rules Enabling Act and is constitutional. For a discussion of the *Hanna* analysis, see *supra* notes 64-75 and accompanying text.

101. Origination of this analysis is normally attributed to Professor Henry Hart, who contended that words have "standard instances" in which their meanings do not change. *See* Hart, *Positivism and the Separation of Law and Morals,* 71 HARV. L. REV. 593 (1958).

102. For text of Rule 3, see *supra* note 13.

103. *See supra* note 81.

Second, the *Walker* and *Hanna*[104] direct collision analyses are contradictory. The *Walker* Court warned against interpreting its decision as requiring narrow construction of the Federal Rules in order to avoid a direct collision with state law.[105] The *Hanna* Court, however, stressed that the conflict between Rule 4(d)(1) and the Massachusetts service of process statute was sufficiently direct because it was "unavoidable."[106] The negative implication of the *Hanna* language is, of course, that an avoidable conflict between federal and state provisions might not require application of the Federal Rule. A conflict between the two could be avoided, however, only by narrowly construing the relevant Federal Rule, contrary to *Walker's* admonitions.

Third, as an interpretive tool, the Court's plain meaning analysis[107] fails miserably. The most obvious defect in the rule lies in its assumption that interpretation of language requires merely discovering the meaning of particular words.[108] But words have no real independent meaning apart from the context in which they are used.[109] In order to grasp the meaning of language, one must take into account the purpose behind the words and their necessary implications.

By employing a plain meaning analysis of Rule 3, the *Walker* Court assumed that the Rule's meaning could be derived simply from its twelve words.[110] A fuller and more accurate contextual interpretation of Rule 3 would have led to the conclusion that Rule 3 necessarily implies that filing a complaint also tolls the statute of limitations. The concept of commencing an action connotes that the action has legitimately begun, and that the limitations statute has not expired. The notion of commence-

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104. *See supra* notes 64-86 and accompanying text.

105. Walker v. Armco Steel Corp., 446 U.S. 740, 750 n.9 (1980). "This is not to suggest that the Federal Rules of Civil Procedure are to be narrowly construed in order to avoid a 'direct collision' with state law." *Id.*

106. Hanna v. Plumer, 380 U.S. 460, 470 (1965). "Here, of course, the clash is unavoidable . . . ." *Id.*

107. *See supra* note 100.

108. For a persuasive argument rebutting Professor Hart, advocate of the plain meaning rule, see Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).

109. For the leading analysis of how words change meaning as they shift contexts, see generally L. WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS (1958). See also M. BEARDSLEY, THINKING STRAIGHT 154-57 (2d ed. 1956); A. WHITEHEAD, AN ENQUIRY CONCERNING THE PRINCIPLES OF NATURAL KNOWLEDGE 12-13 (2d ed. 1925).

110. Rule 3 states: "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.

ment, and hence, Rule 3 itself, would have little significance if a court could begin proceedings and then abruptly dismiss the case as time-barred. Rather than illuminating the meaning of Rule 3, the *Walker* Court's semantic plain meaning interpretation obscured and distorted it, leaving Rule 3 to perform an absurdly limited function.[111] Using a plain meaning analysis, lower federal courts faced with a Federal Rule and a contrary state procedural provision could interpret the Federal Rule narrowly by disregarding its necessary implications, and thereby avoid the direct conflict between the two required for the *Hanna* analysis.[112] The result would be unpredictable variations in outcome among courts, and precisely the kind of disuniformity of federal procedure the Federal Rules were designed to correct.

Had the *Walker* Court instead used a contextual, interpretive approach to determining whether Rule 3 and the Oklahoma statute were in direct collision, it would undoubtedly have applied Rule 3 to toll the limitations statute. First, viewing the language of the Rule together with its natural implications, the Court would have concluded that Rule 3 was broad enough to govern the tolling issue. After having met this first part of the *Hanna* three part analysis,[113] the Court would then have proceeded to part two, and inquired whether the Rule exceeds the scope of the Rules Enabling Act.[114] The test to be used is derived from *Sibbach v. Wilson & Co.*,[115] whether Rule 3 "really regulates procedure."[116] Commencement and tolling being clearly procedural functions, the Court would have addressed the third part of the *Hanna* analysis, whether congressional enactment of Rule 3 was constitutional.[117] Under *Hanna*, a Rule is constitutional if it is "rationally capable of classification as

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111. The *Walker* Court outlined Rule 3's new role. "Rule 3 governs the date from which various timing requirements of the federal rules begin to run . . . ." Walker v. Armco Steel Corp., 446 U.S. 740, 751 (1980).

112. The *Hanna* Court held the *Erie* doctrine inapplicable to the Federal Rules, devising instead a three-part analysis for determining their validity. *See supra* notes 64-75 and accompanying text.

113. *See* Hanna v. Plumer, 380 U.S. 460, 472 (1965).

114. *See id.* at 464-65, 472; *supra* notes 68-70 and accompanying text.

115. 312 U.S. 1 (1941).

116. *Id.* at 14. Professor Ely suggests that the Rules Enabling Act language providing that the Rules cannot alter substantive state rights, rather than the liberal *Sibbach* test, is the appropriate standard. The court in Platis v. Stockwell, 630 F.2d 1202 (7th Cir. 1980), adopted the Ely standard. *Id.* at 1205. For a discussion of the Ely approach, see *supra* notes 36 & 51.

117. *See supra* note 71 and accompanying text.

procedural."[118] Rule 3 being rationally procedural, the Court would have held it constitutional and applied it to toll the Oklahoma statute of limitations.

V. WALKER APPLIED

The confusion engendered by the *Walker* Court's reliance on *Ragan* is demonstrated by a federal circuit court case that attempted to follow its flawed analysis, *Alonzo v. ACF Property Management, Inc.*[119] Guided by *Walker's* strong approval of *Ragan*,[120] the *Alonzo* court omitted the first part of the *Walker*

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118. 380 U.S. 471-72.

119. 643 F.2d 578 (9th Cir. 1981).

In cases involving the precise issue in *Walker*, whether filing the complaint pursuant to Rule 3 or actually serving process on the defendant pursuant to state law tolls the limitations period, lower courts have followed *Walker's* dictate to apply the state law. *See, e.g.*, Calhoun v. Ford, 625 F.2d 576 (5th Cir. 1980); Rose v. Cantrell, 508 F. Supp. 330 (D. Wyo. 1981); Somas v. Great Am. Ins. Co., 501 F. Supp. 96 (S.D.N.Y. 1980).

Some courts have also applied the analysis to situations involving Rules other than Rule 3, and found the Rule sufficiently broad to govern the issue. In Boggs v. Blue Diamond Coal Co., 497 F. Supp. 1105 (E.D. Ky. 1980), the court found a direct collision between FED. R. CIV. P. 25(a)(1) and the state substitution of party statute, KY. REV. STAT. ANN. § 395.278 (Supp. 1980)(official edition).

The conflict was less direct between the Rule and the state statute in Platis v. Stockwell, 630 F.2d 1202 (7th Cir. 1980), but there the court also found the Rule sufficiently broad. In *Platis*, the plaintiff claimed that the trial judge erred in failing to instruct the jury on plaintiff's inability to recover if found to have been at least fifty percent negligent or greater. *Id.* at 1204. Failure to give this instruction, required under Colorado's comparative negligence statute, COLO. REV. STAT. § 12-21-111 (1973 & Supp. 1976), would have been error in a state tribunal, regardless of whether either of the parties had objected. 630 F.2d at 1203. Federal Rule 51, in contrast, provides that a party must object to a court's failure to give a jury instruction in order for it to be deemed reversible error. FED. R. CIV. P. 51. The court found Rule 51 to be broad enough to cover the issue; the direct collision with the state provision thus required application of the Federal Rule under both *Walker* and *Hanna*. 630 F.2d at 1205-07.

Presumably, the difference between *Platis* and *Walker* is that in *Platis*, Rule 51 explicitly requires an objection as a prerequisite to assigning error while in *Walker*, Rule 3 does not state that it tolls the limitations statute. Such a small difference in language should not, however, require a different result. Suppose that Rule 51 had merely stated that a party must object to a failure to give a jury instruction, omitting the language in the Rule to the effect that such an objection is required in order to assign error. *Walker* would appear to require the higher degree of specificity for the Federal Rule to control. *See supra* notes 29-34 and accompanying text. Yet it seems implicit that such a failure to object is a prerequisite to assigning the omitted jury instruction as error, and would appear to flow naturally from the requirement that one of the parties object at that stage of the proceedings. Subjecting the Federal Rules to such semantic scrutiny can only lead to variations in outcome among different courts, resulting in the disuniformity of federal procedure the Rules were designed to correct.

120. "The Court reaffirmed that it had distinguished *Ragan* from *Hanna* rather than overruled it." Alonzo v. ACF Property Management Inc., 643 F.2d 578, 580 (9th Cir.

analysis, the direct collision test. The *Alonzo* court instead proceeded directly to the second part of the *Walker* analysis, the integral part test. Finding that the state statute embodied substantive state policy, the court applied the state law rather than the appropriate Federal Rule.

Alonzo involved a direct collision between Federal Rule 6[121] and a state statute governing the computation of time. The plaintiff, Alonzo, suffered bodily injuries on October 23, 1976, as a result of falling from defendant's apartment building.[122] He filed a complaint in federal court on October 25, 1977, one year and two days after the accident date. The California limitations period for personal injury actions based on negligence was only one year.[123] The final day for filing the complaint within the one-year period, October 23, 1977, fell on a Sunday, and the following day, October 24, 1977, was Veteran's Day, a federal holiday. Both the state and federal courthouses were closed on that Sunday, but only the federal courthouse was closed on that Monday; California observes Veteran's Day on November 11.[124] Both Federal Rule 6[125] and the California time statute[126] provide that when the final day falls on a Saturday, Sunday or legal holiday, time is computed by excluding the last day. The issue was whether to apply Rule 6, which would have exempted October 24 as a legal federal holiday, thereby extending the limitations period to the date of filing, or to apply the California time statute, which probably would not have extended the period.[127]

Without any discussion of direct collision, the *Alonzo* court, noting *Walker's* strong endorsement of the *Ragan* analysis,[128] held that the state statute governed. The court also applied the *Ragan* integral part analysis and concluded that the state computation of time provision embodied substantive state policy.[129]

1981).

121. FED. R. CIV. P. 6.

122. Alonzo v. ACF Property Management, Inc., 643 F.2d 578, 579 (9th Cir. 1981).

123. *Id.*

124. *Id.*

125. FED. R. CIV. P. 6.

126. CAL. CODE CIV. PROC. § 12 (West 1954).

127. The court remanded the case to the district court to determine whether October 24, 1977, although not observed as Veteran's Day, was a "day appointed by the President or Governor for a public fast, thanksgiving, or holiday" within CAL. GOV'T. CODE § 6700(m) (West 1980). If it was, the limitations period would extend to October 25, as it would under Federal Rule 6.

128. Alonzo v. ACF Property Management, Inc., 643 F.2d 578, 580 (9th Cir. 1981).

129. *Id.* at 581.

According to the court, the time statute reflected "a strong policy in favor of recognition of certain state holidays on specified days."[130] The court thus allowed the state statute to supplant Federal Rule 6.

The *Alonzo* court's failure to first inquire whether Rule 6 was broad enough to govern time computation is quite understandable: the court was obviously misled by *Walker's* reaffirmation of *Ragan.*[131] *Ragan* itself turned on the *York* outcome determinative analysis; nowhere did the Court mention the direct collision test.[132] The direct collision theory was created by the *Hanna* Court and superimposed on *Ragan* in order to reconcile *Ragan* with its new perspective on the Federal Rules.[133]

The *Alonzo* opinion indicates that the court did not believe that the distinguishing factor between *Hanna* and *Ragan,* and hence, between *Walker* and *Ragan,* was the relative explicitness of the two Federal Rules involved. Rather, the court found the crucial distinction to be whether application of the Rule would encourage forum shopping.[134] Accordingly, the court may have felt compelled to apply the state law because, as in *Ragan,* its use would "wholly bar the plaintiff's recovery."[135] Use of Rule 6, on the other hand, would have allowed the plaintiff to proceed, encouraging the forum shopping the *Alonzo* court thought accounted for the difference in result between *Hanna* and the *Ragan* and *Walker* cases.

The *Alonzo* court's misapplication of *Walker* is not simply the product of a careless reading of the *Walker* opinion. The case demonstrates the impossibility of applying an analysis which purports to harmonize two diametrically opposed theories. *Ragan* was based on an *Erie-York* analysis;[136] *Hanna* repudiated this approach and devised a radically different theory to govern Federal Rules cases.[137] *Walker* attempted to reconcile the two and predictably failed. *Alonzo* is simply evidence of this failure.

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130. *Id.*

131. *See supra* notes 76-86 and accompanying text.

132. *See supra* notes 55-63 and accompanying text.

133. *See supra* notes 76-86 and accompanying text.

134. Alonzo v. ACF Property Management, Inc., 643 F.2d 578, 580 (9th Cir. 1981).

135. *Id.*

136. *See supra* notes 52-57 and accompanying text.

137. *See supra* notes 64-75 and accompanying text.

VI. Recommendations

The serious defects in the *Walker* analysis raise the question of what action is required in order to steer the law toward uniform application of the Federal Rules. Three options exist. First, the Court could overrule both *Ragan* and *Walker* and repudiate the plain meaning test in favor of a contextual analysis of the Federal Rules. The possibility of this occurring is extremely limited.

Second, Congress could amend Rule 3 to explicitly refer to tolling.[138] The Rule would then clearly govern the tolling issue under any interpretive theory. Amending Rule 3 would not, however, remedy the problems resulting from applying the literalistic plain meaning analysis to other Federal Rules.[139] After *Walker*, a Federal Rule will not be considered controlling on any issue not explicitly addressed in the language of the Rule itself. In order to mend the new holes in the Federal Rules created by *Walker's* stress on semantics, all of the Rules would need rewriting to specifically address even the issues they implicitly but obviously were intended to govern.

Third, lower courts could narrowly interpret *Walker*, restricting application of its analysis to cases involving Rule 3. This would seem to be the most realistic and effective course of action. *Walker* can legitimately be limited to Rule 3 cases for two reasons. Both *Walker* and *Ragan* involved Rule 3, and their analyses are tailored to its contours. Moreover, the Rule 3 Advisory Committee itself did not take a position on whether Rule 3 could be applied as a tolling provision.[140] A plain meaning interpretation of Rule 3, together with the inconclusive Committee Note, raise questions about its scope not presented by other Federal Rules. Applying *Walker* only to cases involving Rule 3 would be an appropriate judicial response that would contain *Walker's* ill effects on federal procedural uniformity within a limited sphere.

VII. Conclusion

The *Walker* Court's strong affirmation of *Ragan* and its

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138. *See* Comment, *supra* note 28. The author presents a thorough and intriguing argument for amending Rule 3. *Id.* at 1146-54.

139. For an analysis of the plain meaning rule, *see supra* notes 100-12 and accompanying text.

140. *See supra* note 28.

endorsement of the plain meaning rule for determining the scope of the Federal Rules further confuses rather than clarifies the case law interpreting the Federal Rules and portends a disorderly combination of state and federal procedure in federal diversity cases. The Court should have quietly overruled the troublesome *Ragan* case, employed a contextual interpretation of Rule 3, and applied Rule 3 as a tolling provision. The fundamental logical deficiencies in the *Walker* analysis will likely confound lower courts, as demonstrated by *Alonzo v. ACF Property Management, Inc.*[141] The predictable consequence of *Walker v. Armco Steel Corp.*[142] will be frustration of the purpose behind the Federal Rules of Civil Procedure, the development of a uniform and predictable system of federal procedure.

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141. 643 F.2d 578 (9th Cir. 1981).
142. 446 U.S. 740 (1980).